

CIRCULAR NO. 479 / 2016 DATED 29th OCTOBER, 2016

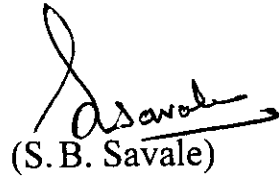
29 OCT 2016

1. It is noted that while conducting the proceedings under Section 41D of the Maharashtra Public Trusts Act, 1950, the Joint Charity Commissioners/Charity Commissioner issue notice to the opponents before framing charge without applying mind as to whether action under Section 41D(1) of the Act can be proposed or not.
2. The phraseology of sub-section (2), however, contemplates 3 stages as below: -
 - i. Proposing action under Section (1) of section 41D by the Charity Commissioner/Joint Charity Commissioners.
 - ii. Framing charge against the trustee or the person against whom the action is proposed.
 - iii. Giving opportunity to such trustee or person of meeting such charges by testing the evidence against him or by him.
3. It is thus quite clear that the first stage is of proposing action. It means an application of mind and scrutiny of the facts stated in the application to find out as to whether they make out the charge or the necessary ingredients of section 41D(1) of the Act.
4. If the facts stated in the application are making out such ingredients then question of proposing action under sub-section (1) would arise leading him to framing of a charge. Thus, for framing a charge, it does not appear to be necessary to hear the opponents. The question of hearing opponents arise after the framing of charge only.

5. It therefore appears necessary to frame charge and then issue notice to the opponents. The practice of issuing notice to the opponents immediately after receiving the application/complaint leads into delay the proceedings under Section 41D of the Act. Many frivolous applications also remain pending for years together because of the delaying tactics of either of the parties.

6. It may be noted that the Amendment Committee appointed by the State Government has taken into consideration this aspect and proposed amendment of sub-section (2) of Section 41D of the Act. The draft amendment is already sent to you by email for perusal.

7. All the Joint Charity Commissioners are requested to take into consideration this interpretation of sub-section (2) and do the needful so that the pendency of proceedings under Section 41D of the Act can be minimized.



(S. B. Savale)

Charity Commissioner,
Maharashtra State, Mumbai

Copy to –

- 1) All Joint Charity Commissioners
- 2) Deputy Charity Commissioner, Head Office.
- 3) Judicial Superintendent, Head Office
- 4) Office File